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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)

Jefferson Telephone Company)

CC Docket No. 92-237

Petition for Waiver of the Four Digit Carrier)

Identification Code (CIC) Implementation)

Schedule)

To: Network Services Division
Common Carrier Bureau

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR WAIVER

Jefferson Telephone Company (Jefferson), by its attorney, pursuant to 47 C.F.R. § 1.3, hereby petitions the Commission for a waiver of the four digit Carrier Identification Code (CIC) implementation requirement contained in the Commission's Second Report and Order (Second Report and Order), 7 CR 709 (Comm'n 1997).¹ In support whereof, the following is respectfully submitted:

¹ 47 C.F.R. § 1.3 provides

§1.3 Suspension, amendment, or waiver of rules. - The provisions of this chapter may be suspended, revoked, amended or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.

While it does not appear that the four digit CIC implementation was incorporated into any of the Commission's rules, there does not appear to be any reason to conclude that 47 C.F.R. § 1.3 does not permit waiver of uncodified rules or policies. Informal discussions with the staff indicated that petitions for waiver of the four digit CIC implementation schedule would be entertained; the staff's position is supported by precedent. See e.g. Southwestern Bell Telephone Company Tariff F.C.C. No. 73, 1997 FCC LEXIS 3686 (Comm. Car. Bur. July 14, 1997) (DA 97-1472) (para. 13) ("Under Section 1.3 of our rules, the Commission may waive any provision of its rules or orders if 'good cause' is shown.")

1) Jefferson is a rural local telephone exchange carrier located in Jefferson, South Dakota. Jefferson has 550 access lines and serves a population of approximately 1100 persons. Jefferson does not currently provide equal access, and Jefferson has not received a bona fide request for equal access, and Jefferson's customers connect with competing long distance carriers through Feature Group B and C dialing access. Shortly after the Commission released the Second Report and Order Jefferson discussed with Nortel whether Jefferson's existing 403.31 Generic DMS 10 switch could handle four digit CICs. At that time Jefferson was informed that its current switch could handle four digit CIC as well as equal access. Thus, Jefferson determined that it would convert to equal access and it began the balloting process.²

2) Subsequently, when Nortel technicians began changing translations in the switch in preparation for the conversion to equal access, Nortel determined that an upgrade to the switch would be necessary in order to implement the four digit CIC conversion and that the upgrade would cost approximately \$100,000.³ Jefferson is in the process of being sold and Jefferson has requested that the South Dakota PUC approve a December 31, 1997 transfer date. As disclosed in the pertinent PUC filing, the buyer intends to install a remote switch in the exchange and use its own DMS 100 switch as the host switch to perform all switching functions. The buyer anticipates that the remote switch installation will be accomplished within six months of closing on the sale of Jefferson.

² Jefferson anticipated a November 19, 1997 equal access/four digit CIC implementation date.

³ The equipment being replaced was purchased in 1988.

3) In order to obtain a waiver pursuant to 47 C.F.R. § 1.3 the petitioner must

demonstrate that special circumstances warrant deviation from the rules or orders and that such a deviation would better serve the public interest than the general rule. Moreover, grant of a waiver presumes the validity of the general rule, must not undermine the policy served by the rule, and must not be so broad as to eviscerate the rule. Rather, the request must be tailored to the specific contours of the exceptional circumstances.

Southwestern Bell Telephone Company Tariff F.C.C. No. 73, 1997 FCC LEXIS 3686 (Comm. Car. Bur. July 14, 1997) (DA 97-1472) (para. 13) (footnote omitted).

4) The Second Report and Order explains that CICs “are numeric codes that, as originally devised, enabled local exchange carriers (LECs), as providers of interexchange access services, to identify access customers in order to bill and route traffic to such customers. CICs facilitate competition by enabling callers to use the services of any number of telecommunications service providers.” Second Report and Order, at para. 1. The Second Report and Order notes that “demand for CICs has grown” and that “implementation of the Telecommunications Act of 1996 . . . most likely will increase the number of telecommunications carriers entering the market and create an increased need for CICs so that traffic can be routed to these new entities.” Second Report and Order, para. 3. The Second Report and Order shortened the “six-year transition to a two-year and nine month transition” “because of the changing circumstances since the record in this docket closed in 1994.” Second Report and Order, para. 4. Thus, the policy served by the Commission’s accelerated four digit CIC implementation schedule is to foster competition in the interexchange markets.

5) It is respectfully submitted that in view of the circumstances relating to Jefferson’s situation, and in view of the policy goals underlying the four digit CIC conversion implementation schedule, the public interest would be served by granting Jefferson a six month waiver, until June

30, 1998, of the four digit CIC implementation requirement. The following supports the waiver request.

6) As discussed above, the policy objective underlying four digit CIC conversion is the expansion of competition in the interexchange market. The purpose of this rule would not be thwarted by grant of the requested waiver. Jefferson has never received a request to provide equal access and, to date, no interexchange carrier with a four digit CIC has shown any interest in serving Jefferson's exchange area. While it may be theoretically possible that an interexchange carrier with a four digit CIC would request access to Jefferson's exchange between now and June 30, 1998, such a possibility seems remote at best. Even if such a request were received, Jefferson's exchange area is a very small market and the public interest would not be adversely affected by the slight extension requested herein.⁴ Accordingly, because no carrier has requested equal access, and because Jefferson would generally not be required to provide equal access until three years after receiving a bona fide request for access, competition in the interexchange market will not be harmed by a limited extension of time to implement the four digit CIC conversion.⁵

⁴ It is noted that Jefferson would be afforded three years to upgrade its switch equipment to afford interexchange carriers equal access. See MTS and WATS Market Structure Phase III, 100 F.C.C.2d 860, 875 (Comm'n 1985) (para. 48). Thus, there appears to be some tension between the Second Report and Order which requires a nearly immediate upgrade to four digit CICs and the Commission's long standing policy of affording independent LECs three years to comply with a bona fide equal access request.

⁵ In addition to affording Jefferson permission to postpone implementation of the four digit CIC conversion thereby permitting Jefferson to remain compliant with the Commission's requirements, grant of the waiver would permit Jefferson to demonstrate to interested carriers that Jefferson's traffic may be carried during the waiver period without four digit CICs without risk of possible Commission sanctions.

7) The Commission notes in the Second Report and Order that it is providing a twenty-three month four digit CIC conversion implementation schedule, Second Report and Order, para. 4, presumably because the Commission proposed the conversion in the 1994 Notice of Proposed Rulemaking, 9 FCC Rcd. 2068, however, from an LEC manager's point of view, only an eight month transition period has been provided. Oft stated Commission policy is that items discussed in notices of proposed rulemaking are not binding because there is no assurance that the rule or policy will be adopted as proposed. See e.g., Multimedia, Inc., 11 FCC Rcd 4883, 4892 (Comm'n 1995) (para. 27) (an applicant "is not entitled to rely on our Further Notice of Proposed Rulemaking, which represents proposed policy and not existing law. An applicant before the Commission is not entitled to the benefit of a policy not yet adopted.")

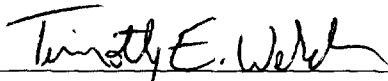
8) It seems reasonable for manufacturers and carriers to have concluded that the transition period would commence upon release of a report and order. The Notice of Proposed Rule Making does not indicate that the transition period would begin running while the Commission considered the matter over several years, especially where the Notice of Proposed Rulemaking extolled the virtues of lengthening the transition period from 18 months to six years. Notice of Proposed Rulemaking, 9 FCC Rcd. at 2077 (para. 54). Moreover, manufacturers and carriers did not learn of the "changing circumstances" which the Commission indicated warranted a shorter transition period until the Commission released the April 1997 Second Report and Order. Thus, while the Commission may have discussed the possibility of requiring new equipment and software in 1994, the Commission's proposal did not crystallize until the release of the April 1997 Second Report and Order and LECs could not reasonably rely upon the 1994 Notice of Proposed Rulemaking to order

equipment and schedule installation. Jefferson is proceeding with deliberate speed given the "changing circumstances."

9) Jefferson promptly began investigating how to implement four digit CIC upon release of the Second Report and Order thereby evidencing Jefferson's intent to implement the four digit CIC conversion as soon as practicable. No interexchange carrier has requested that Jefferson implement equal access and grant of the instant waiver will not interfere with competition in the interexchange market. Further, the cost to upgrade Jefferson's existing equipment is prohibitive in relation to Jefferson's customer base in view of the fact that the buyer of the exchange will implement a new switching arrangement which will remove Jefferson's switch from service; any switching upgrades done in the near term will be rendered superfluous within six months of the close of the sale. Accordingly, it is respectfully submitted that Jefferson has presented unique and compelling circumstances demonstrating good cause that grant of the instant waiver request would serve the public interest.⁶

Respectfully submitted,
JEFFERSON TELEPHONE COMPANY

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October 23, 1997

Its Attorney

⁶ A copy of the instant petition for waiver is being served upon Geraldine Matise, Chief, Network Services Division, 2000 M Street, N.W. #235.

CERTIFICATION

I hereby certify under penalties of perjury that I have reviewed the forgoing PETITION FOR WAIVER and that except for those matters about which official notice may be taken, the statements made therein are true and accurate to the best of my knowledge, information, and belief.


Richard Connors, Manager
Jefferson Telephone Company

October 16, 1997